Priddis Music, Inc. v. Trans World Entertainment Corporation Doc. 53 Att. 9

EXHIBIT N

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ORIGINAL

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PRIDDIS MUSIC, INC.,

Plaintiff,

-against- Index No.: 05-CV-0491

TRANS WORLD ENTERTAINMENT CORPORATION,

Defendant.

Held at:
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway
Albany, New York

August 17, 2006
10:11 a.m.

EXAMINATION BEFORE TRIAL OF DEFENDANT TRANS WORLD MUSIC CORPORATION, by its officer, agent or employee, **SARA CUNNINGHAM**, held pursuant to Cross-Notice, before Dawn Sampson-Miller, a Shorthand Reporter and Notary Public in and for the State of New York.

APPEARANCES:

For Plaintiff:

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.
677 Broadway
Albany, New York 12207-2503
By: KENNETH L. GELLHAUS, ESQ.

For Defendant:

BOIES, SCHILLER & FLEXNER, LLP
10 North Pearl Street, 4th Floor
Albany, New York 12207
By: ROBERT C. TIETJEN, ESQ.

A No.

Q Do you know how long that relationship was?

A I believe we ended our purchasing from them in -- it was late 2004 or early 2005.

Q Late 2004 or early 2005?

A Correct.

Q Okay. When was the beginning of the relationship with Madacy?

A I believe it was mid 2003.

Q So you've described maybe approximately a year-and-a-half time period for the Madacy group, from mid 2003 to either late 2004, early 2005. Is that a fair characterization?

A I believe so, yeah.

Q I'm not trying to pin you down to the months, just to get a time range.

During part of that time, 2003 to 2004, then both Madacy and Priddis were supplying karaoke product to Trans World; correct?

A Correct.

Q As a percentage of purchase orders of product, would you compare the Madacy orders to the

Priddis orders?

MR. TIETJEN: Object to the form. You can answer.

A I would say it would be a small percentage. While we carried hundreds of Priddis titles, we only carried, I would say, less than 20 Madacy titles, perhaps even less than ten titles from that vendor.

Q Okay. Now, were these titles that were unavailable from Priddis?

A Correct. They were actually multipacks, which meant each pack included two to three discs, whereas everything we had purchased from Priddis were all single discs.

Q Okay. All right. Moving on from Madacy, I think that leaves two other possible karaoke vendors from the total of five. Do you recall the names of one or both of those?

A One would be Stellar Records.

Q And Stellar Records is from what part of the country?

A I'm not sure.

Q Okay. And do you know the approximate

time frame of the relationship between Stellar and Trans World?

A I'm not sure of that. We did not do very much business with this vendor, so I don't recall when it was.

Q When you say "not very much business," would that be less than a year, more than a year but less than two years?

MR. TIETJEN: Object to the form.

A I cannot be sure. I believe it would be less than two years.

Q Okay.

A But it could be less than a year even.

Q And was the volume of business that was done with Stellar, to your knowledge, approximately the same as with Madacy?

A I would say even less than with Madacy.

Q Okay. And then the last of the five?

A We did do business with Sound Choice.

Q And what time frame was that?

A Again I cannot be sure. I would say 2004, but I can't be certain.

Q And how long was that business with Sound

Choice?

A Again it was a short period of time. I would say approximately a year, but that would be, you know, an estimate.

Q Beginning sometime in 2004 and ending sometime last year?

MR. TIETJEN: Object to the form.

A I'm not sure certain of the dates.

Q Okay. What type of product would have been purchased by Trans World from Sound Choice?

A Karaoke product.

Q General titles, for example, something other than multipack?

A Correct. They were single-disc karaoke titles.

Q During the approximate one-year time period, would you describe the volume that was ordered by Trans World from Sound Choice to have been larger than from either Madacy or Stellar?

MR. TIETJEN: Object to the form.

A I believe it was even less than all of the mentioned.

Q Can you tell me what titles were being ordered at that time?

A I don't have that information, no.

Q For the products, karaoke products, including the multipacks purchased from Madacy and from Stellar Records, can you tell me how those were, if you know, how those were displayed at the various Trans World stores?

MR. TIETJEN: Objection to the form.

A The Party Time or Cybersound product was displayed on the slot wall within bins on the slot wall, small bins. During the time period that we carried that product, we had a karaoke section set up in our store on the wall that included the machines, and the Cybersound product was set up to be as part of that section in the store.

Q Would that have been the same location for the Madacy CDs or the Stellar CDs?

A The Madacy, I believe that to be the case, where we still had that section set up. Once that section -- the section's no longer in our stores. At the point where we decided to pull that section out of our stores -- because karaoke wasn't as popular. We had that in there when it was very popular. So once it lost its popularity, we had pulled the product out of that featured section on the wall and put the karaoke music in our regular CD bins. So that's where any of the music would be now.

Q Now, when you say that karaoke "lost its popularity," is there kind of an approximate time frame? And I'm speaking very loosely here. Spring of 2003? Fall of 2005? I'm not asking a date or even a month, just maybe a particular time when --

MR. TIETJEN: Object to the form.

A I believe it would have to be at some point in 2003. Really for Trans World we saw the height of its popularity in 2002, really the holiday season of 2002, to be more specific. After that we really saw it trend down for us. And as time passed, it really lost its popularity more and more.

Q So it was less popular in 2003 than 2002? Is that --

A Correct.

Q And that trend continued into 2004?

A Correct.

Q Do you recall approximately when the shift of the special karaoke section that you described earlier in many of your stores, when that was disassembled and those specialized karaoke CDs were put into the regular karaoke bins?

MR. TIETJEN: Object to the form.

A I don't recall the specific time period that it was removed. I would approximate it to be sometime in 2003 or 2004. I don't have a specific time.

Q Were you involved in the decision to make that change?

A No. That would have come from, you know, an executive level on how the space should be used.

Q So you were not consulted in any way with respect to that decision?

A No, no.

Q Do you know if Russ Kellar was consulted in connection with that decision?

A I don't have that knowledge. But if I had to, you know, give my opinion, it wouldn't have been at his level to decide what would have been done with that space.

A No. An RAR is a Trans World identifier that stands for a return authorization request.

Q Okay. So you were saying that these details included obtaining an RAR number from Priddis and what other details?

MR. TIETJEN: Object to the form. I think it was an RA number from Priddis.

Q An RA number.

A Correct. And what was your question?

Q My question is what were some of the other details that followed from getting the RA number?

A I would be given the list of items that were determined to be returned, and I would --

Q Now, I'm going to interject. From whom did you receive the list of items?

A It would either be from Priddis or from Russ.

Q In each month did you get a list of items from each of them when there were returns, or could the list come from one or the other?

A I did not receive a list each month from them. I wouldn't say that the returns were done monthly. It was as needed, I would say. So it would be whatever time period that returns needed to be done. But the list would be, again, agreed to by both parties, so we were all working off of the same list.

Q And how did you receive this list? In other words was it telefaxed to you? Was it sent to you by e-mail?

MR. TIETJEN: Object to the form.

A In the one instance that I do remember that I was present at the meeting where this was discussed, we sat down and we had a report in front of us, a sales report. We went through the sales report, so it was a hard copy of a sales report printout. And after reviewing that report, we identified items on that report based on the sales volume of those items, and it was all agreed to at the meeting. And then at the same time in that meeting we talked about new titles being presented to replace these items that were being discontinued and returned.

So in that case I don't know that the list would have come from Priddis or from Russ. I most likely would have taken that information, and that's how I would have come about, you know, having that information, by taking it from that sales report.

Q Okay. And then in other instances when returns were going to be arranged which did not happen as the result of a face-to-face meeting such as the one you've described, how did it come to pass that you learned which titles were going to be returned?

A I'm uncertain. They could have been e-mailed to me. It could have been another printout that was given to me. It could have been a telephone conversation where I would have talked to Priddis and they said, you know, "We decided to turn off these titles." I can't be certain since it was so long ago.

Q But in order to do the returns, you needed an RA number; correct?

MR. TIETJEN: Object to the form.

A No.

THE WITNESS: I'm sorry.

A No. That wasn't the agreement, that we needed an RA number. The RA number is really used by most of our vendors to help them with their accounting, to match up what RA number they would like to use to, like, coordinate with a specific return so they know what's going on. But with Priddis we had a hundred percent returns, so really the RA number wasn't required.

Q So you're saying that returns could be made without an RA number?

A Correct, based on the hundred percent return.

Q And the reasons again that a particular title or titles would be returned, what would some of those reasons be?

MR. TIETJEN: Object to the form.

MR. GELLHAUS: Let me reword the question.

Q When Trans World, as opposed to Priddis, when you received a list from Trans World, someone else in your company, for returns, listing what would be returned, what were some of the reasons, if you knew them, that typically required even the need to make a return?

MR. TIETJEN: Object to the form.

A One of the main reasons for returns was based on sales. If an item was not selling in our stores, it would not help either company to have it in our stores, Priddis or Trans World, so it would be decided to return it back to Priddis and, you know, bring in another title that would sell much better.

Q Would you say of all the reasons for returns, that that was the most significant reason?

MR. TIETJEN: Object to the form.

MR. GELLHAUS: Let me strike the question.

Q Would you say of all the reasons for Trans World to request titles to be returned, that that reason that you gave was the one that applied to the majority of returns?

MR. TIETJEN: Object to the form.

A I would say it is one of the top reasons that titles would be decided to be returned. Another large reason would be Christmas titles, which could be, you know, high-volume returns. But the decision there is Christmas product does not sell year-round, so there's a specific time frame for those returns, and at the end of the holiday season those are returned to Priddis.

Q But generally after the holiday season, Christmas and holiday titles are not going to really sell until the following holiday season? Is that a fair --

A Correct.

Q -- description of that reason?

A I would agree with that.

Q So then the return of titles because they didn't really sell was -- excluding holiday titles -- was perhaps the primary reason for a return being made of a title?

MR. TIETJEN: Object to the form.

A There could have been other, you know, many other reasons why product would be returned to Priddis.

Q What would some of those be, those other reasons?

A One of the reasons may be if the store closed and they needed to do a return on product that was in the store. We return a lot of that product to the vendors. So that could be one possibility that they would be receiving returns.

Q During your tenure at Trans World from May of 2001 until present, can you tell me, to your knowledge, how many Trans World stores have closed?

MR. TIETJEN: Object to the form.

A I cannot. Trans World opens and closes stores on an ongoing basis, based on many different reasons, so I do not have knowledge of that.

Q Would you categorize that particular reason for returns as being a less significant reason than the return of titles because the titles weren't selling?

MR. TIETJEN: Object to the form. I mean she testified she doesn't know how many stores open and close, so I'm not sure --

MR. GELLHAUS: Right, but I'm asking something different. I understand she doesn't know that. But what she does know, or I'm trying to determine if she knows, is she knows what the returns were due to stores being closed, separate and apart from knowing how many stores. She knows what returns were made perhaps and can compare that to how many returns were made due to a title not selling. That's what I'm asking, is to make that comparison.

MR. TIETJEN: If you know.

A Since I don't know how many stores it entails, I couldn't guess on how many Priddis titles would have been returned due to closing stores.

Q So is your testimony that when you would receive lists of titles to be returned from Trans World, that there was no indication of whether the reason for the title being returned was a store closure?

MR. TIETJEN: Object to the form.

A With store closures, they were handled separately from the way that, you know, a discontinued title list would be handled. Really, the list of discontinued titles would come about based on sales or --

Q So you're saying that the lists were separate; is that correct?

A Correct. We would not go through the

same process as we would for a closing store, the same way we would with a discontinued title.

Q Okay. But for the return of karaoke product where you received lists concerning the returns, when there was a return based on a store closing, you would receive a separate list; is that correct?

A No.

MR. TIETJEN: Object to the form.

THE WITNESS: Sorry.

A No. They were handled differently. As to where really -- I was not aware, myself, of what was going back to Priddis based on store closings.

Q Okay. But you knew that the store closing returns were handled differently.

A Correct.

Q Do you know in what way they were handled differently?

A To my knowledge, they would be done at store level, where they would either box up the product and send it directly back to Priddis, or they would send it back to our warehouse, where it would then be sent back to Priddis. It would not be handled on a list that I would use, have access to.

Q So you would not be given a list of titles that were being returned due to a store closing?

A No.

Q So the list for titles that you were given might have had multiple reasons, but one of the reasons would not have been a store closing. Is that fair to say?

A Correct. The list was not generated from a store closing, but the list could have been generated for multiple reasons.

Q Okay. Now, if a title was being returned due to a lack of sales, is it fair to say that Trans World had sales reports that would indicate to the buyers that a particular title with its particular skew was not selling real well?

MR. TIETJEN: Object to the form.

A We have sales reports at Trans World that are generated to show what a particular skew or title sells in the stores.

Q And who would make the decision as to

whether or not a particular title was selling sufficiently poorly that it should be returned?

A I believe that was done collectively with Priddis and Trans World.

Q Who at Trans World's end would make that decision?

A The buyer.

Q And with respect to karaoke product, have you ever for any particular karaoke title had the power or authority to order a particular title returned?

A I didn't understand the question.

Q Have you ever as part of your duties been able to direct any karaoke vendor, not just Priddis but any of them, to return a particular title?

A As part of my duties?

Q As an assistant buyer.

A At the time that I was an assistant buyer, I would again provide the reports to the buyer, who would analyze the reports, review them with Priddis, identify the problem sellers, and decide which titles to return. I did not have, I guess, the decision-making ability to do that.

That would be the buyer's responsibility.
Q Have you ever had that decision-making ability with respect to any karaoke product, not just Priddis product?
MR. TIETJEN: Do you understand the question?
THE WITNESS: I understand the question. I'm just trying to recall.
A I'm not certain that I've ever made that decision on the karaoke category, because I believe at every point in time where there has been a return there was a buyer in place, but I can't be certain, and the buyer would have made that decision. At this point I'm the associate buyer, and I'm in charge of making those decisions. However, we're not buying karaoke at this point, so I wouldn't be deciding that for the karaoke category.
Q Okay. And I think you earlier testified that after, I believe, Mr. Kellar left, his position was unfilled for a while; correct?
A Correct.
Q Was there any time after he left when

EXHIBIT O

ORIGINAL

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PRIDDIS MUSIC, INC.,

Plaintiff,

-against- Index No.: 05-CV-0491

TRANS WORLD ENTERTAINMENT CORPORATION,

Defendant.

Held at:
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway
Albany, New York

August 16, 2006
10:10 a.m.

EXAMINATION BEFORE TRIAL OF DEFENDANT TRANS WORLD MUSIC CORPORATION, by its officer, agent or employee, **KATHLEEN FESTA**, held pursuant to Cross-Notice, before Dawn S. Miller, a Shorthand Reporter and Notary Public in and for the State of New York.

APPEARANCES:

For Plaintiff:

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.
677 Broadway
Albany, New York 12207-2503
By: KENNETH L. GELLHAUS, ESQ.
MICHAEL J. HALL, ESQ. (partial)

For Defendant:

BOIES, SCHILLER & FLEXNER, LLP
10 North Pearl Street, 4th Floor
Albany, New York 12207
By: ROBERT C. TIETJEN, ESQ.

A No.
Q Did you have any background in reconciling of accounts?
A Yes.
Q And what was that background from?
A I had to reconcile accounts at Stewart's in the cost-of-goods area.
Q In 1997, when you first began as the vendor relations supervisor, how many different vendor relationships were you supervising?
A I can't recall the number. I know what it is today. But I have to believe it was at least 200.
Q And these would be nationwide vendors?
A Yes.
Q Would these be vendors of all different types of sizes?
A Yes.
Q And when I say "sizes," I mean in terms of dollar volume.
A Yes.
Q And over the course of the six years that you were in this position, did that number of

vendors change at all?

A Yes.

Q Okay. And how did it change?

A We increased our vendors as we took on, you know, as we grew.

Q So that, say, in 2003, when you were promoted, how many vendors approximately were you supervising?

A I'd say about 400 or so.

Q Of the 400, how many of these vendors were what would be considered karaoke vendors?

A One that I know of.

Q And what is the name of that vendor?

A Well, it was Sound Choice. I guess it would be two, then, because Priddis.

Q Was there a time when -- and I'm talking '97 to 2003 -- when Trans World had more than one karaoke vendor at the same time?

A I'm not real sure about that. I know we had Sound Choice, and then that business ended and then we went with Priddis.

Q Okay. And during your several years as vendor relations manager, would you describe for me how your duties changed from the duties when you were the supervisor?

A Well, you know, my staff had grown to, you know, seven instead of the five. We've taken on more duties, such as cash flow projections for payments. I've also taken on the accounts payable advertising department. Different, you know, reporting, month-end reporting.

Q And the number of vendors during 2003 to 2006, was that still around 400?

A No, approximately -- closer to 600.

Q And of these vendors, how many karaoke vendors?

A I know Priddis, and then I'm not sure after the business ended with Priddis how many karaoke vendors.

Q Were there karaoke vendors after Priddis then?

A I'm not sure.

Q If there were, would you be responsible for that vendor relationship?

A I would.

Q Then is it possible that there was a --

strike the question.

How is it possible, then, that there might be a relationship with a karaoke vendor that you would not be aware of after Priddis?

A It could have been a vendor that had karaoke plus other products, and I may not have known it was karaoke as well. You know, maybe I knew the music side of it but not the karaoke side.

Q So do you know if there is presently a vendor providing karaoke product to Trans World?

A Yes.

Q And who is that vendor?

A Madacy, M-A-D-A-C-Y.

Q And do they provide exclusively?

A I'm not sure.

Q You're just aware through your duties as vendor relations manager that some of what you see in the course of cash flow projections and so forth indicates that part of Madacy's product is karaoke product. Is that a fair statement?

A Yes. I've known them to sell us karaoke product.

Q And from time to time do you see their invoices for karaoke product?

A I don't, no.

Q From time to time are you or a member of your staff responsible for payments that go to Madacy in relation to karaoke product that they supply?

A We produce the product payment schedules. We don't see the invoices.

Q Okay. Can you tell me what a product payment schedule is?

A It's our duty to actually pull out what's open for payable and produce a schedule as to how much we're going to pay each month for that particular vendor.

Q So would there be a reason why the entire amount of the payable was not paid?

A For a particular vendor or for --

Q For a particular vendor.

A There could be several reasons.

Q And what might those be?

A Whether -- you know, it depends -- really, it depends on the particular -- it's so individual. It depends on the particular vendor.

There could be returns going back or any authorized deductions.

Q So then in doing the payment scheduling, is it fair to -- well, strike the question.

Summarize for me, then, how for a vendor you would do the payment scheduling, what reports you look at.

A We look at the open payable report, of course, and then we look at return authorization requests that are -- that there's a report for that. We look at outstanding advertising. That's about it.

Q And by "outstanding advertising," what does that mean?

A Advertising that we're still waiting for authorization for. So we look at anything that has been approved by the vendor.

Q Okay.

A We produce reports on all of those, which affect payment.

Q And the reports that you produce, they're then transmitted to another part of the company?

A What do you mean by --

the back end, we find any shortages or non-receipt, that type of thing.

Q Okay. But the Priddis invoices are not always paid in full; correct?

A They're always paid in full.

Q I'm sorry. I thought earlier this morning you testified that the Priddis invoices were reduced by the amount of anticipated returns.

A No. Nothing's ever --

MR. TIETJEN: Object to the form.

THE WITNESS: I'm sorry.

A Nothing's ever reduced. We do take an anticipated return deduction, which on the Priddis side should be flipped over as a debit memo on their statement to be paid back, but the invoice is always paid in full.

Q Then further down on this page there are CMMs and CMU items. Are those similar to the ones you testified about earlier this afternoon?

MR. TIETJEN: Object to the form.

A Those are credits from Priddis to be deducted by Trans World.

Q For example there's two credit memos,

9897 and 9900, which total about $32,000. Do you see where I'm referring to? It's about three-quarters of the way down the page.

MR. TIETJEN: What were those numbers again?

A Oh, 149897?

Q Yes, and 9900. Those are credit memos from Priddis; is that correct?

A Yes. If you look at the description on this particular page, it references a Trans World charge-back number. Those are credit memos for returns. Because if you look down further, there's CBRs. That's what I said earlier, how we reverse the actual charge-back and then take the credit.

Q Okay. But those numbers don't match.

A Which numbers?

Q Well, there's a negative 25,789 that's associated with CMM 149897. And then down below there's a CBR 513388, which seems to reference the 149897, but it's in a slightly different number.

A There is never an equal match to credits and debits. There could be several different reasons why. You know, the returns go back and in 2004 for the items listed that Priddis refused.

Q Is it possible that there are other items that, to use your words, Priddis refused that remain unreturned that go back to 2003?

MR. TIETJEN: Object to the form.

A I don't know. I'm not -- I wouldn't know that.

Q Do you understand my question?

A Maybe not.

Q The date range on this chart runs, under the date column, from February through June of '04. So I'm asking if there's a similar report showing other unreturned product for earlier years.

A No. This is just a report that someone put together to say this is the product that is sitting with our trucking company that Priddis did not accept.

Q Okay. And there's no other product that you know of other than what's listed here?

A I don't know that. This is one instance.

Q Okay.

MR. GELLHAUS: Would you mark that, please?

(Plaintiff's Exhibit 13 was marked for identification.)

BY MR. GELLHAUS:

Q Have you seen this document before today, Plaintiff's Exhibit 13?

A Yes.

Q And is it fair to say this document is a printout of an e-mail sent to Mark Berrada for which you were cc'ed?

A Yes.

Q And it contains prior e-mails essentially, and to summarize, concerning the issue of product being returned and the unwillingness of Priddis to accept it. Is that a fair summary?

A Yes.

Q The date at the top of the first page indicates July of 2004. Do you recall receiving this e-mail or the carbon copy?

A Yes. I received this from Mark Berrada.

Q Right. But do you recall receiving it or just do you recall the issue that is described in this --

A Yes.

Q -- as it took place in 2004?
Do you recall whether you did anything in reaction to this e-mail?
MR. TIETJEN: Object to the form.
A I was actually not on the e-mail trail here except to get a copy from Mark when I produced documents.
Q I'm sorry. Can you explain your answer again? You were not on the e-mail trail except when?
A When I asked Mark Berrada if he had documents pertaining to one of the answers that I -- regarding the refusal of returns.
Q Okay. In other words to prepare and send to us?
MR. TIETJEN: Object to the form.
A Yeah, yes.
Q Because it appears that you were cc'ed with this in July of '04 before the document request. Maybe we're just not communicating here.
A Oh, yeah. Maybe. Yep, I think you're right. I'm sorry. I'm not really sure that I took any action, but Mark Berrada did send me this

double billing at times. There were a lot of invoicing issues, which made the reconciliations virtually impossible.

Q On the last page there's an e-mail -- I'm sorry, the second-last page, there's an e-mail from you -- this is on page TWEC 143. There's an e-mail from you where there's -- it is sent to Russell Kellar, Sue Tiemann, and cc'ed to Lainee at Priddis. Do you see where I'm referring?

A Yes.

Q Can you tell me about that e-mail?

MR. TIETJEN: Object to the form.

A That --

Q Can you take a moment to look at that e-mail and tell me what circumstances led you to send it?

A I sent it to respond to the e-mail that Lainee sent to Russ after we were so frustrated reconciling often. One of the statements she made was that "It can get frustrating to continuously reconcile while no one is willing to work on the other end." So that was in response to that. We were working on the account. That's what prompted me to send that e-mail to let her know to deal directly with us on the vendor relations side.

Q Okay. And was this the first that you had directed Priddis to deal directly with the vendor relations group, not with Russ, on reconciliation issues?

A I'm not sure. I think so. I think so.

Q Can you recall if there was a past e-mail or conversation where you might have advised either Lainee or Rick Priddis to direct reconciliation statements to someone in your group?

A I don't believe so.

Q But is it fair to say that reconciliations were taking place much sooner than the date of this e-mail, August 2003?

A We reconciled on February of 2003, so yes.

Q Were there no other reconciliations done before February 2003?

A I can't be sure about that. I'd have to go back and look.

Q Did you have any conversations with Mr. Kellar concerning the need for him to direct any reconciliation requests to either you or Sue Tiemann?

A To direct Russ to direct the requests?

Q Yeah, conversations with Mr. Kellar telling him more or less what you told Lainee in this e-mail, telling him to direct any reconciliation requests to you or your group.

A You know, I don't know for sure. There could have been. If Lainee was contacting Russ, I'm sure I would have told him to have her contact us regarding reconciliations.

MR. GELLHAUS: Okay. Let's go off the record.

(Discussion off the record. A 15-minute recess was taken, after which Plaintiff's Exhibit 16 was marked for identification. At 3:59 p.m. the proceedings continued.)

BY MR. GELLHAUS:

Q Ms. Festa, I've handed you a document marked for identification as Plaintiff's Exhibit 16. Can you tell me if you've seen that document before today?

A Yes.

Q Can you tell me what that document is?
A It's the summary for a reconciliation.
Q Okay. Can you tell me who might have prepared that document?
A I would say Alyssa Lotano at the time.
Q Okay. This is a document that you've seen before today?
A Yes.
Q Do you recall if she discussed the document with you?
A Yes. Everyone discusses the reconciliations with me when they're complete.
Q Okay. And this is a reconciliation apparently from August 9th, 2004; correct?
A Yes. It began that day, obviously.
Q Okay.

(Plaintiff's Exhibit 17 was marked for identification.)

BY MR. GELLHAUS:

Q Ms. Festa, if you'd also take an opportunity to look at Plaintiff's Exhibit 17 --
A Okay.
Q -- would it be fair to say that

Plaintiff's Exhibit 17 is the backup detail to Plaintiff's Exhibit 16?

A Yes.

Q And for Plaintiff's Exhibit 16 there's a listing balance as of 8/9/04, or at least a line that says "Listing balance as of 8/9/04" that states the number 426,379.30. Do you see where I'm referring to?

A Yes.

Q Can you tell me what that number represents?

A That is the open payable balance as of 8/9/2004.

Q The open payable balance to Priddis?

A Yeah, for Priddis.

Q For Priddis. And that's after the completion of a reconciliation process by Trans World?

A No. That's the balance as of 8/9/04, and then we reconciled to their statement. That's why I said the reconciliation started on that day.

Q Okay. Well, what was the conclusion of that reconciliation?

A Basically it shows why there's a difference of almost $100,000, and that would include the charge-backs, the body of number 16, Exhibit 16. Those are our differences. It just lists them out for us so we could see, you know, what we have to work on.

Q Looking at Plaintiff's Exhibit 16, the top line, "Priddis statement balance," is that -- and there's a number, 320,000. Is that the book balance on your records?

A No, that's on Priddis's records.

Q That's on Priddis's records.

Then the line item listing balance as of 8/9/04, that's the reconciliation -- that's after application of the charge-backs, invoices, credits, the lines in between; correct?

A No. That's the Trans World open payable balance as of 8/9. Your statement-to-listing total is the completion of that. That's 429,379.30.

Q Okay. What is that number?

A That's just the difference. If you take -- it's merely a summary as to what our differences are between the statement balance and the payable.

Q So what's the payable balance as of 8/9/04?

A 426,379.30.

Q That's the payable balance to Priddis; right?

A That's the Trans World open payable.

Q Open payable, okay.

A Yes.

(Plaintiff's Exhibit 18 was marked for identification. -

BY MR. GELLHAUS:

Q Showing you a document marked for identification as Plaintiff's Exhibit 18, have you seen that document before today?

A Yes.

Q Can you tell me what the document is?

A That is the Priddis or the Trans World open payable balance for Priddis.

Q Okay. And how does that document tie in or relate to Plaintiff's Exhibits 16 and 17?

A This open payable is the listing balance on Exhibit 16. This is what the open payable --

the detail behind it, invoices, charge-backs.

Q Okay. And how is this detail different than the detail in Plaintiff's Exhibit 17?

A Seventeen lists out exactly what our differences are. For example, on the first page of 17 there is a list of CBMs that are charge-backs that are not on the Priddis statement but they're in the open payable. So there's a $43,000 difference. And then it goes on to list out invoices that are on the statement but not on the Trans World payable. So whatever matches is not on Exhibit 17. Does that make sense?

Q It's almost an exception report.

A Yeah, you could look at it that way.

Q It's non-matching instances between the two statements, your payables listing and their statement.

A Yes.

Q Okay. Do you know who Scott Lagas is?

A Yes. He was the EDI administrator for Trans World at one time.

Q And is he with Trans World at this time?

A No, he's not.

Q Do you know when he left Trans World's employment?

A I would say 2004, possibly 2005. I'm not real sure. Between 2004 and 5.

(Plaintiff's Exhibit 19 was marked for identification.)

BY MR. GELLHAUS:

Q Ms. Festa, I'm showing you a document marked for identification as Plaintiff's Exhibit 19. Have you seen that document before today?

A Yes.

Q Is this a document that was printed out by Alyssa Lotano from her e-mail records and given to you as part of the disclosure in this case?

MR. TIETJEN: Object to the form.

A Yes.

Q Now, you were not cc'ed on this e-mail; correct?

A Correct.

Q But would you take a moment to look at the content of the e-mail and let me know if you are aware of the issues that were discussed in the e-mail between the participants to the e-mail?

ways, because there's a hundred percent return policy. It doesn't say that there would be -- I know that when the buyers are talking, they review inventory. I don't know specifically what was --

Q Well, I understand what the document says. I'm just looking to make sure that there's no other provision there that I'm missing that describes that in one month there would be a debit for anticipated returns that's reversed the following month. I don't think that the section you're referring to says anything about from month to month what will happen. It says what you just said it does.

A Right.

Q Okay.

MR. GELLHAUS: May I have that marked?

(Plaintiff's Exhibit 21 was marked for identification.)

BY MR. GELLHAUS:

Q Showing you a document marked for identification as Plaintiff's Exhibit 21, have you seen that document before today?

A Yes.